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December 30, 2021

**VIA ELECTRONIC FILING**

The Honorable Jocelyn Boyd  
Chief Clerk / Executive Director  
Public Service Commission of South Carolina  
101 Executive Center Drive, Suite 100  
Columbia, SC 29210

Re: Cherokee County Cogeneration Partners, LLC v. Duke Energy Carolinas, LLC  
and Duke Energy Progress, LLC  
Docket No. 2020-263-E

Dear Ms. Boyd:

I am writing on behalf of Duke Energy Carolinas, LLC ("DEC") to update the Commission on the current status of this proceeding pending a final Order of the Commission on the Second Motion for Rehearing of Cherokee County Cogeneration Partners, LLC ("Cherokee"). This letter addresses the status of negotiations between DEC and Cherokee as well as the status of the extension of the 2012 contract between DEC and Cherokee and the security in place to protect customers from the risks of overpayments to Cherokee relating to the extension of payments under the 2012 contract. This letter is not a request for any relief or action from the Commission at this time. It is provided as an update on the status of the proceeding and the issues that remain to be resolved in the near future.

As you are aware, during the pendency of this complaint proceeding, the Commission twice ordered extensions of the 2012 PPA between DEC and Cherokee. In agreeing to Cherokee's second request to require DEC to continue paying Cherokee under the higher 2012 PPA rates on an intermediate basis, Order No. 2021-294 directed that "Cherokee should bear the economic risk of any possible overpayment from any extension of the 2012 PPA." To ensure that DEC's customers were secured against overpayments made to Cherokee from January 1, 2021 to present, DEC required security from Cherokee totaling \$6 million. As the Commission is aware from prior correspondence dated September 10, 2021 and October 8, 2021, the \$6 million in security currently held by DEC is held in cash (\$3 million) and through a Letter of Credit (\$3 million). Although the Letter of Credit was set to expire on December 23, 2021, we are pleased to report that on December 21, 2021 it was extended until February 21, 2022.

By letter dated August 27, 2021, DEC advised the Commission that "[i]n keeping with the Commission's past extensions of the 2012 PPA while the matter was pending before the Commission, DEC intends to continue paying Cherokee at rates



consistent with the 2012 PPA until a successor PPA is executed and will continue to expect that Cherokee will bear the economic risk of any possible overpayment from any extension of the 2012 PPA, consistent with previous Commission extensions, unless otherwise directed by the Commission.” Subsequent to the August 27 letter, Cherokee has continued to invoice DEC for power delivered during September, October, and November 2021 under the 2012 PPA rates and DEC has paid Cherokee these invoiced amounts in full. Thus, in the absence of a successor PPA, the parties continued to perform under the 2012 PPA on an intermediate basis, and DEC has continued to hold security for the overpayments pursuant to the Commission’s directive that Cherokee bear the risk of overpayment. For reasons explained further below, it is the intent of DEC and Cherokee to discontinue operating under the 2012 PPA as of December 31, 2021.

In addition, DEC has actively sought to execute a successor PPA with Cherokee since the Commission issued its Order No. 2021-604, which ruled on Cherokee’s establishment of a legally enforceable obligation. On September 23, 2021, immediately following issuance of the Commission’s September 22, 2021 Directive clarifying Order No. 2021-604, DEC submitted a draft successor PPA to Cherokee. The PPA reflected the October 2018 rates set forth in Hearing Exhibit 14 per the Commission’s instructions. While the parties engaged in preliminary discussions regarding the PPA on September 29, 2021, Cherokee informed DEC that it was not prepared to enter into formal negotiations until issuance of a Commission Order memorializing the September 22, 2021 Directive. Accordingly, following issuance of the Commission’s November 10, 2021 Directive denying Cherokee’s second motion for reconsideration, DEC again contacted Cherokee on November 16, 2021, and as well as in late November and early December, in an attempt to renew negotiations for the successor PPA and extend the letter of credit. On December 15, 2021 Cherokee responded and proposed a schedule that would result in execution of a new PPA by January 14, 2022. On December 22, 2021 DEC responded to that letter by agreeing to the proposed schedule and requesting that Cherokee provide a specific response by January 7, 2022 to the DEC proposed PPA sent to Cherokee on September 23, 2021. However, on December 23, 2021 Cherokee informed DEC by email of its intent to terminate efforts to negotiate a successor PPA with DEC and to instead begin merchant operations beginning January 1, 2022.

Since it now appears that there will be no successor PPA between Cherokee and DEC, the remaining issues that will require action by the Commission are: (1) the issuance of an order formalizing the rulings made in the directive issued on November 10, 2021; and (2) the final accounting of the overpayments during 2021 related to continued performance under the 2012 PPA. DEC plans to finalize the accounting related to the overpayments and file a petition for an accounting and true-up as soon as possible and well in advance of the February 21, 2022 expiration of the letter of credit.



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DEC also continues to be obligated to purchase Cherokee's power under PURPA in the future should Cherokee elect to sell power to DEC either on an as-available basis or under a new legally enforceable obligation and successor PPA for a future contract term, and provided that Cherokee maintains its status as a qualifying facility under PURPA.

Yours truly,

Frank R. Ellerbe, III

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c via email: Parties of Record  
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Samuel J. Wellborn, Associate General Counsel  
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